

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COMDATA NETWORK, INC.)
) No. 3-05-0130
v.)
)
IMAGE TRANSPORTATION)
SERVICES, INC., and JAMES MUHE)

MEMORANDUM

Pending before the Court is the defendants' motion to alter or amend (Docket Entry No. 38) the order entered June 21, 2005 (Docket Entry No. 31). The defendants argue that the plaintiff is not entitled to judgment in the amount of \$517,575.86, because, on April 28, 2005, the plaintiff received a payment of \$175,000.00 on the bond issued by American Contractors Indemnity Company (ACIC).

The defendants had ample opportunity to raise this issue in response to the plaintiff's motion for partial summary judgment filed on April 19, 2005 (Docket Entry No. 24), and failed to do so. In response to the defendants' motion, the plaintiff points out that, under the doctrine of equitable subrogation, ACIC, as surety, may recover the amount paid on the bond when the plaintiff recovers the full amount of the debt. In any event, the defendants have not provided the Court with any legal theory that would mandate a reduction in the judgment awarded the plaintiff.¹

An appropriate order will enter.



JULIET GRIFFIN
United States Magistrate Judge

¹ The defendants have not filed a reply to the plaintiff's response.

